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OFFICE OF PETITIONS

In re Application of	:	
Rajkotia	:	ON APPLICATION FOR
Application No. 10/693,753	:	PATENT TERM ADJUSTMENT
Filed: October 24, 2003	:	
Attorney Dkt. No.	:	
2003.07.003.WS0	:	
For: WIRELESS NETWORK USING	:	
SHARED TRAFFIC CHANNEL MODE OF	:	
OPERATION FOR BROADCAST	:	
SERVICES	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed February 9, 2010. Applicants request that the determination of patent term adjustment be corrected from eight hundred eighty-six (886) days as indicated on the Determination of Patent Term Adjustment to eight hundred forty-three (843) days.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under §

1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

notice of allowance, the application for patent term adjustment is **GRANTED** to the extent indicated herein.

On November 9, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 886 days. The instant application for patent term adjustment was timely filed on February 9, 2010.

Applicants dispute the 169 day reduction and instead contend that a 129 day reduction is required. Petitioner contends the 129 day reduction is based upon the day the application was held abandoned on May 17, 2009 until the date the petition under 37 CFR 1.181 was granted on September 23, 2009.

A review of the record shows that the holding of abandonment was withdrawn on September 23, 2009. The holding was withdrawn as it was established that a timely reply in the form of a request for continued examination (RCE) was mailed on February 11, 2009. As such a reduction is not required in this instance as the petition to withdraw the holding of abandonment was filed within two months from the mailing of the Notice of abandonment. As such the 169 reduction is not warranted and will be removed.

However, further review of the record shows that an additional reduction of 25 days is required for the submission of supplemental reply in the form of replacement drawings on April 10, 2007 pursuant to 37 CFR 1.704 (c)(8).

A review of the application history reveals that patentees should have been assessed a delay of twenty-five (25) days for the submission of the replacement drawings on April 10, 2007. 37 CFR 1.704(c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;


The 25 day delay is calculated beginning on March 17, 2007 the day after the submission of the amendment on March 16, 2007 and ends on April 10, 2007 the day the supplemental reply, in this instance the replacement drawings were submitted on April 10, 2007. A reduction of 25-days will be entered.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is six **hundred eighty-nine (689)** (721 - 1 - 25- 2 - 4) days.

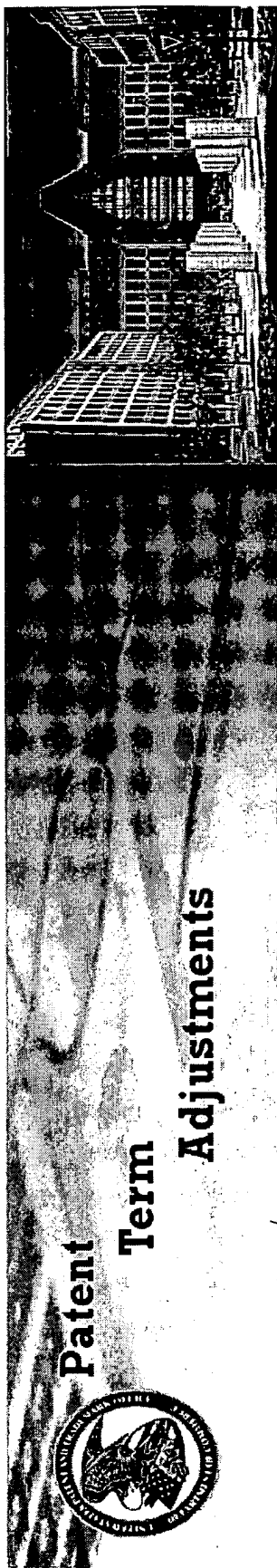
Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.


Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM Screen



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application:

Application Filing Date	10/24/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	721
A Delays	721	PTO Manual Adjustment	144
B Delays	0	Applicant Delay (APPL)	176
C Delays	0	Total PTA (days)	689

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
99	09/07/2010		P028	Adjustment of PTA Calculation by PTO	144		0
78	11/09/2009		MN/=.	Mail Notice of Allowance			0
77	11/09/2009		MEX.A	Mail Examiner's Amendment			0
76	11/05/2009		IREV	Issue Revision Completed			0
75	11/05/2009		DVER	Document Verification			0

74	11/05/2009	N/=.	Notice of Allowance Data Verification Completed	0
73	11/05/2009	EX.A	Examiner's Amendment Communication	0
72	11/05/2009	CNTA	Notice of Allowability	0
71	11/05/2009	FWDX	Date Forwarded to Examiner	0
69	11/05/2009	FWDX	Date Forwarded to Examiner	0
67	11/05/2009	ABN9	Disposal for a RCE / CPA / R129	0
57	09/26/2009	EML_NTR	Email Notification	0
56	09/23/2009	MPREV	Mail-Petition to Revive Application - Granted	0
55	09/22/2009	PREV	Petition to Revive Application - Granted	0
70	08/05/2009	AMPR	RCE- AF Processed	0
68	08/05/2009	02/17/2009 RCEX	Request for Continued Examination (RCE)	169
54	08/05/2009	PET.	Petition Entered	47
53	07/21/2009	MABN2	Mail Abandonment for Failure to Respond to Office Action	0
52	07/20/2009	ABN2	Aband. for Failure to Respond to O. A.	0
51	01/30/2009	MCTAV	Mail Advisory Action (PTOL - 303)	0
50	01/29/2009	CTAV	Advisory Action (PTOL-303)	0
49	01/26/2009	FWDX	Date Forwarded to Examiner	0
48	01/21/2009	A.NE	Amendment after Final Rejection	0
47	11/17/2008	MCTFR	Mail Final Rejection (PTOL - 326)	0
46	11/14/2008	CTFR	Final Rejection	0
45	10/17/2008	IRFND	Request for Refund	0
44	09/21/2008	FWDX	Date Forwarded to Examiner	0
43	07/18/2008	07/14/2008 A...	Response after Non-Final Action	4
42	07/18/2008	XT/G	Request for Extension of Time - Granted	41
41	04/14/2008	MCTNF	Mail Non-Final Rejection	0
40	04/11/2008	CTNF	Non-Final Rejection	0
38	02/07/2008	FWDX	Date Forwarded to Examiner	0
37	01/11/2008	01/09/2008 A...	Response after Non-Final Action	2
36	10/09/2007	MCTNF	Mail Non-Final Rejection	36
35	10/01/2007	CTNF	Non-Final Rejection	0
34	09/06/2007	FWDX	Date Forwarded to Examiner	0
32	09/06/2007	FWDX	Date Forwarded to Examiner	0
30	09/06/2007	ABN9	Disposal for a RCE / CPA / R129	0
33	08/31/2007	AMPR	RCE- AF Processed	0
31	08/31/2007	RCEX	Request for Continued Examination (RCE)	0
29	08/31/2007	BRCE	Workflow - Request for RCE - Begin	0

28	08/17/2007	MCTAV	Mail Advisory Action (PTOL - 303)	0
27	08/16/2007	CTAV	Advisory Action (PTOL-303)	0
26	08/13/2007	FWDX	Date Forwarded to Examiner	0
25	08/09/2007	A.NE	Amendment after Final Rejection	0
24	06/13/2007	MCTFR	Mail Final Rejection (PTOL - 326)	0
23	06/07/2007	CTFR	Final Rejection	0
22	04/10/2007	C614	New or Additional Drawing Filed	0
20	04/02/2007	FWDX	Date Forwarded to Examiner	0
21	03/16/2007	C614	New or Additional Drawing Filed	0
19	03/16/2007	03/15/2007 A...	Response after Non-Final Action	1
18	12/15/2006	12/24/2004 MCTNF	Mail Non-Final Rejection	721
17	12/11/2006	CTNF	Non-Final Rejection	-1
16	12/04/2006	DOCK	Case Docketed to Examiner in GAU	0
15	10/14/2006	DOCK	Case Docketed to Examiner in GAU	0
14	07/31/2006	DOCK	Case Docketed to Examiner in GAU	0
13	03/21/2006	DOCK	Case Docketed to Examiner in GAU	0
12	05/24/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
11	05/21/2004	DOCK	Case Docketed to Examiner in GAU	0
10	03/08/2004	CFRPT	Corrected filing receipt	0
9	01/28/2004	COMP	Application Is Now Complete	0
8	01/28/2004	WROIPE	Application Return from OIPE	0
7	01/28/2004	ROIPE	Application Return TO OIPE	0
5	01/28/2004	COMP	Application Is Now Complete	0
6	01/27/2004	OIPE	Application Dispatched from OIPE	0
4	01/16/2004	L194	Cleared by OIPE CSR	0
3	01/16/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	12/19/2003	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/24/2003	IEXX	Initial Exam Team nn	0

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